



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 220720-0159]

RIN 0648-BL63

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Greater Amberjack Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final temporary rule; emergency action; request for comments.

SUMMARY: NMFS issues this final temporary rule to promulgate emergency measures, due to recently discovered circumstances that present serious conservation issues for the greater amberjack stock in the Gulf of Mexico (Gulf). As requested by the Gulf of Mexico Fishery Management Council (Council), NMFS issues this final temporary rule to reduce overfishing, conserve the resource of greater amberjack in the Gulf, and reduce the likelihood of adverse socio-economic impacts that would occur if additional reductions in harvest were required to rebuild the stock. This final temporary rule modifies the greater amberjack recreational fixed closed season for the 2022-2023 fishing year in the Gulf exclusive economic zone (EEZ) to be August

1 - 31, 2022, and November 1, 2022 - July 31, 2023 (open September 1, 2022 - October 31, 2022). The final temporary rule will be effective for 180 days unless superseded by subsequent rulemaking; however, the rule's effectiveness may be extended for an additional 186 days, pursuant to provisions in the Magnuson-Stevens Act. The purpose of this emergency action for Gulf greater amberjack is to protect the greater amberjack resources by reducing the likelihood of overfishing and helping ensure that the greater amberjack stock rebuilds within the current rebuilding time, as well as to reduce the severity of any post-season recreational accountability measure overage adjustment as a result of the recreational annual catch limit (ACL) being exceeded.

DATES: This final temporary rule is effective [*insert date of publication in the **FEDERAL REGISTER***], through [*insert date 180 calendar days after date of publication in the **FEDERAL REGISTER***]. Comments on the final temporary rule may be submitted through [*insert date 30 days after date of publication of the final temporary rule in the **FEDERAL REGISTER***].

ADDRESSES: You may submit comments on this document, identified by Federal Docket Management System (FDMS) Docket Number NOAA-NMFS-2022-0070, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2022-0070 in the Search box. Click on the "Comment" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Kelli O'Donnell, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A"; in the required fields if you wish to remain anonymous).

Comments received through means not specified in this rule will not be considered.

FOR FURTHER INFORMATION CONTACT: Kelli O'Donnell, telephone: 727-824-5305 or email: Kelli.ODonnell@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf is managed under the Fishery Management Plan for the

Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Magnuson-Stevens Act provides the legal authority for the promulgation of emergency regulations under section 305(c) (16 U.S.C. 1855(c)).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the optimum yield (OY) from federally managed fish stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the Nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. To further this goal, the Magnuson-Stevens Act requires fishery managers to end overfishing and rebuild overfished stocks. At its June 2022 meeting, in accordance with Section 305(c)(3) of the Magnuson-Stevens Act, the Council requested NMFS promulgate an emergency rule to protect the greater amberjack resource, due to recently discovered circumstances which present serious conservation issues to the stock.

All weights provided in this final temporary rule, unless otherwise noted, are given in round weight.

Historical Status of the Greater Amberjack Stock

The first stock assessment for Gulf greater amberjack was completed in 2000 (*Stock assessment of Gulf of Mexico greater amberjack using data through 1998*. Turner, S.C., N.J. Cummings, and C.P. Porch. 2000. NOAA, NMFS, SEFSC. <http://sedarweb.org/docs/suar/SEDAR%202010%20GAJ%20Stock%20Assessment%20Update%20Including%20Appendices%20I-III.pdf>). That assessment showed that as of 1998, the greater amberjack stock was overfished and undergoing overfishing. Secretarial Amendment 2 established a rebuilding plan for greater amberjack that was expected to rebuild the stock within 7 years (by the end of 2009) (68 FR 39898, July 3, 2003). In 2006, Southeast Data, Assessment, and Review (SEDAR) 9 was completed and showed the greater amberjack stock was not recovering as previously projected in Secretarial Amendment 2. Instead, the stock continued to be overfished and was experiencing overfishing. The Council subsequently developed Amendment 30A to the FMP and set sector catch limits and accountability measures (AMs) to end overfishing and rebuild the stock by 2010 (73 FR 16830, March 31, 2008), which was consistent with the time frame of the original rebuilding plan implemented with Secretarial Amendment 2. In 2010, SEDAR 9 Update was completed, and it again showed the stock was overfished and was experiencing overfishing. The Council then developed Amendment 35 to the FMP, which set sector annual catch targets (ACTs), and again reduced the overfishing limit

(OFL), acceptable biological catch (ABC), and sector ACLs to end overfishing and rebuild the stock (77 FR 67574, November 13, 2012). In March 2014, the SEDAR 33 benchmark stock assessment showed that greater amberjack had remained overfished and was experiencing overfishing (as of 2012) and did not meet the rebuilding timeline set by Secretarial Amendment 2. The Council then developed a framework action to the FMP to reduce the ACLs for the purpose of ending overfishing, and set a new rebuilding deadline of 2019 (80 FR 75432, December 2, 2015).

In 2016, the SEDAR 33 Update assessment was completed, and showed that the stock was still undergoing overfishing and was overfished and would not be rebuilt by 2019. In response to SEDAR 33 Update, in 2017, the Council approved two other framework actions to the FMP: the first reduced the OFL, ABC, and sector-specific ACLs and ACTs to end overfishing and set a new rebuilding plan with completion time of 2027 (82 FR 61485, December 27, 2017); while the second modified the recreational fishing year and fixed closed season (83 FR 134268, March 29, 2018).

Current Status of Greater Amberjack Stock

In October 2020, SEDAR 70 was completed and showed that the greater amberjack stock has been overfished and has been undergoing overfishing almost continuously since 1980. NMFS informed the Council of these determinations in a letter dated April 7, 2021. The Magnuson-Stevens Act

specifies that measures to end overfishing and rebuild the stock must be implemented within 2 years of such notification; in this case, no later than April 7, 2023.

The Council's Scientific and Statistical Committee (SSC) reviewed the SEDAR 70 results at its January 2021 meeting, accepted the assessment as the best scientific information available, and agreed that greater amberjack was still overfished and undergoing overfishing. The SSC provided recommendations for a reduced OFL and ABC so that the stock could rebuild by 2027, the current target rebuilding time. The Council discussed the SSC's recommendations at its January 2021 meeting and instructed staff to begin work on an FMP amendment (Amendment 54) to update the rebuilding plan for greater amberjack. The Council also discussed the implications of incorporating into SEDAR 70 the updated historical recreational landings estimates that are calibrated to the Marine Recreational Information Program (MRIP) Fishing Effort Survey (FES).

The use of MRIP-FES data in SEDAR 70 had two primary effects on the results of the assessment and subsequent management actions. First, the MRIP-FES estimates of historical recreational effort and catch are substantially greater than previous assessments. The use of MRIP-FES recreational data leads to higher estimates of historical removals for this stock. Second, the proportion of landings from the recreational sector is higher than previously

thought when the allocation of the total allowable harvest between the commercial and recreational sectors was established in Amendment 30A (GMFMC 2008). Therefore, the Council requested that the SSC provide catch level recommendations for various allocation alternatives.

In preparing the requested catch level projections for SSC review, the Southeast Fishery Science Center (SEFSC) updated its projection methodology. The SEFSC also updated the recruitment estimates and biomass targets that were used to inform the original results presented at the January 2021 meeting. This information was presented to the SSC in September 2021. The SSC determined that the updates were appropriate and requested the sector allocation specific projections be presented at its November 2021 meeting. The SEFSC provided updated projections and the SSC affirmed its prior determination that greater amberjack is overfished and experiencing overfishing, and recommended new rebuilding catch limits. The Council reviewed an overview of this new information in January 2022 and more detailed alternative catch level projections in April 2022.

In April 2022, it became clear that because the recreational fishing year occurs over 2 calendar years and the reduced catch levels would not be implemented until the later part of the fishing year, more immediate action might be necessary to constrain recreational harvest while the Council works to finalize the new catch limits. Therefore,

in June 2022, the Council reviewed options to modify the recreational fixed closed season to help constrain harvest to the reduced catch levels under consideration in Amendment 54.

The Council is considering management measures in Amendment 54 that would reduce catch limits consistent with the SSC's recommendation. However, because of the time needed for the Council to complete development of the amendment and for NMFS to implement the subsequent rulemaking, these measures will not likely be implemented until the spring of 2023. That projected implementation date for Amendment 54 will not align with the start of the 2022-2023 recreational fishing year, which runs August 1, 2022, through July 31, 2023. However, landings that occur during this time will be compared to the reduced 2023 ACL. Therefore, at its June 2022 meeting, the Council decided to request emergency action for the 2022-2023 greater amberjack recreational fishing year to reduce the likelihood of substantial recreational overharvest. NMFS received the Council request in a letter dated July 5, 2022. The Council did not include in its request any action related to the commercial sector because NMFS projected that the harvest by the commercial sector would not exceed any of the reduced commercial ACL or ACT alternatives under consideration in Amendment 54 prior to implementation of the amendment.

The current recreational AMs for greater amberjack were implemented through Amendment 30A to the FMP in 2008 (73 FR 16830, March 31, 2008). The AMs specify that if the recreational ACT is reached or is projected to be reached, greater amberjack fishing will be closed to the recreational sector for the remainder of the fishing year. In addition, if the ACL is exceeded, NMFS will reduce the recreational ACL and the recreational ACT by the amount of the recreational ACL overage in the prior fishing year.

Currently, recreational harvest of greater amberjack is closed from November through April and June through July. This means that harvest is permitted during the months of August through October, and the month of May. The fixed closed season, which was implemented through a framework action to the FMP in 2018 (83 FR 14202, April 3, 2018), is in place during peak spawning in the majority of the Gulf (March and April) and allows for both a fall and spring recreational season. The Council requested that NMFS modify the fixed closed season for the 2022-2023 fishing year by allowing harvest only during the months of September and October.

The current recreational ACL is 1,309,620 lb (594,034 kg) and the current recreational ACT is 1,086,985 lb (493,048 kg). Under the alternatives the Council is considering in Amendment 54, if the current recreational sector allocation of 73 percent and the current buffer

between the ACL and ACT of 17 percent are retained, the reduced 2022-2023 recreational ACL and ACT would be 473,770 lb (214,899 kg) and 315,674 lb (143,187 kg), respectively, for the 2022-2023 fishing year. The current catch limits are not directly comparable to the catch limits that the Council is considering in Amendment 54 because those proposed catch limits are based on an assessment that incorporated MRIP-FES data. As explained above, MRIP-FES estimates more recreational harvest than previously thought. Thus, had MRIP-FES estimates been available when the current catch limits were put into place, the current recreational ACL and ACT would have been greater.

NMFS projects that the reduced ACT would be met by August 23, 2022. However, NMFS cannot close the recreational sector based on an ACT that has not been implemented. If the current fixed closed season was to remain in effect, NMFS projects that recreational harvest would exceed the reduced recreational ACL by approximately 948,708 lb (430,327 kg). If this were to occur, the recreational sector would be required to pay back the overage during the 2023-2024 fishing year, which would result in a complete closure. In addition, approximately 400,000 lb (181,437 kg) of the projected overage would not be paid back because NMFS does not have the authority to carry the overage adjustment forward to a second year. This could have serious conservation impacts including failure

to meet the greater amberjack stock's rebuilding timeline of 2027, which could result in the need to further reduce catch levels and also could result in negative socio-economic effects in the long-term.

Council Emergency Action Request

In June 2022, the Council requested that NMFS implement an emergency rule that modifies the recreational fixed closed season for greater amberjack from November through April and June through July, to August 1 through August 31 and November through July. This would allow harvest to occur in September and October of 2022, and NMFS projects this harvest would not exceed the reduced 2022-2023 recreational ACL. However, a shift in fishing effort could occur, which makes the projections uncertain.

Although the action in this final temporary rule would likely have adverse socio-economic effects beginning in the 2022-2023 fishing year, the Council and NMFS have determined that the short-term socio-economic effects are outweighed by the need to minimize additional long-term reductions in harvest and resulting long-term adverse socio-economic effects, which may otherwise occur. If the projected recreational ACL overage occurs under the current recreational fixed closed season, the Council and NMFS expect it to reduce the biomass of the greater amberjack stock, which could prevent rebuilding of the stock by 2027.

Criteria and Justification for Emergency Action

NMFS' *Policy Guidelines for the Use of Emergency Rules* (62 FR 44421; August 21, 1997) list three criteria for determining whether an emergency exists. Specifically, NMFS' policy guidelines require that an emergency: (1) Result from recent, unforeseen events or recently discovered circumstances; and (2) Present serious conservation or management problems in the fishery; and (3) Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. NMFS issues this emergency rule in compliance with these guidelines to prevent serious conservation issues to the stock that would increase the probability of not meeting the rebuilding timeline of 2027.

With respect to the first criterion, the recently discovered circumstances include the new stock assessment (SEDAR 70) results that indicate the greater amberjack stock in the Gulf continues to experience overfishing and is not making adequate progress towards rebuilding, the SSC catch level recommendations presented to the Council in January 2022, and the analyses presented to the Gulf Council in April and June 2022, that indicate that harvest by the recreational sector during the 2022-2023 fishing year is expected to significantly exceed the reduced

recreational ACLs that the Council is considering in Amendment 54.

The second criterion, which requires a present serious conservation or management problem in the fishery, is satisfied because the measures in this emergency rule are necessary to avoid a significant overage of the recreational ACL, which would likely require NMFS to close recreational harvest for the entire 2023-2024 recreational fishing year and negatively affect the current rebuilding timeline. If this emergency rule is not implemented, the greater amberjack stock may not rebuild as projected.

To address the third criterion, NMFS has determined that the immediate benefit of implementing the emergency rule outweighs the value of advance notice, public comment, and deliberative consideration of the impacts to the same extent as would be expected under the normal rulemaking process. Continued harvest at levels similar to the last 3 years' average landings would negatively affect the health of the greater amberjack stock and likely require greater long-term reductions in harvest. The 2022-2023 recreational fishing year begins on August 1, 2022. By foregoing the normal rulemaking process, this emergency rule will minimize adverse biological effects on the stock and minimize long-term adverse socio-economic effects to fishermen and fishing communities that utilize the greater amberjack resource.

Emergency Measures

This final temporary rule would modify the greater amberjack recreational fixed closed season to be August 1 - 31 and November 1 - July 31 (open September 1 - October 31) for the 2022-2023 fishing year in the Gulf EEZ. The fixed closed season will be effective for 180 days after publication in the **Federal Register**, as authorized by section 305(c) of the Magnuson-Stevens Act. This temporary final rule for emergency action could be extended for an additional 186 days, once the public has had an opportunity to comment on the rule. If the emergency action were to be extended, NMFS would respond to any public comments received on this final temporary rule in the extension temporary rule in the **Federal Register**. The Council and NMFS will continue to develop more permanent measures to reduce overfishing of greater amberjack through Amendment 54 to the FMP.

Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Act, 16 U.S.C. 1855(c). The Assistant Administrator (AA) for Fisheries, NOAA has determined that this emergency action is consistent with the Magnuson-Stevens Act, the Reef Fish FMP, and other applicable law. This action is being taken pursuant to the emergency provisions of the Magnuson-Stevens Act and is exempt from Office of Management and Budget review.

The AA finds good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b) (B). Providing prior notice and opportunity for public comment on this action would be contrary to the public interest.

The greater amberjack stock in the Gulf was assessed through SEDAR 70 in 2020. The assessment indicates that the stock continues to undergo overfishing and is not making adequate progress towards rebuilding. The Council's SSC made final catch level recommendations in November 2021, which the Council reviewed in January 2022. In April 2022, the Council reviewed additional information that indicated that recreational harvest could significantly exceed the reduced recreational ACL alternatives under consideration in Amendment 54. In June 2022, the Council reviewed options for modifying the recreational fixed closed season in an effort to avoid a significant overage of those reduced recreational ACL alternatives, and voted to request that NMFS implement this emergency rule to change the recreational closed season to prohibit harvest in August 2022. NMFS received the Council's request on July 5, 2022.

This change in the recreational fixed closed season requires immediate implementation. If NMFS were to provide prior notice and comment, NMFS would be unable to implement the change by August 1, 2022, and projects recreational harvest would otherwise greatly exceed all of the 2022-2023

recreational ACLs that the Council is considering in Amendment 54. NMFS projects that no harvest would be allowed in the 2023-2024 fishing season and that the entire amount of the overharvest would not be paid back under current recreational AMs. As a result, there would be a reduction in the biomass of the greater amberjack stock and more severe long-term reductions in harvest may be required to rebuild the stock. Therefore, the new recreational fixed closed season for greater amberjack must be implemented immediately and prior notice and opportunity for public comment would be contrary to the public interest.

The need to implement these measures immediately for the reasons stated above also constitutes good cause under authority contained in 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness of the rule.

This final temporary rule for emergency action is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment pursuant to 5 U.S.C. 553 or other law. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing season, Greater amberjack, Gulf of Mexico, Recreational, Reef Fish.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 20, 2022.

Kimberly Damon-Randall,
Acting Deputy Assistant Administrator for Regulatory
Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part
622 is amended as follows:

**PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND
SOUTH ATLANTIC**

1. The authority citation for part 622 continues to
read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.34, suspend paragraph (c) and add
paragraph (h) to read as follows:

**§ 622.34 Seasonal and area closures designed to protect
Gulf reef fish.**

* * * * *

(h) *Seasonal closure of the recreational sector for
greater amberjack.* The recreational sector for greater
amberjack in or from the Gulf EEZ is closed from August 1
through August 31, and November 1 through July 31. During
the closure, the bag and possession limit for greater
amberjack in or from the Gulf EEZ is zero.